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13 Attorneys for Defendant ARISTA NETWORKS, INC.

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

17 CISCO SYSTEMS, INC.,

18 Plaintiff,

19 v.

20 ARISTA NETWORKS, INC.,

21 Defendant.  
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Case No. 5:14-cv-05344-BLF (NC)

**DECLARATION OF ELIZABETH  
MCCLOSKEY IN SUPPORT OF  
DEFENDANT ARISTA NETWORKS,  
INC.'S ADMINISTRATIVE MOTION TO  
FILE DOCUMENTS UNDER SEAL IN  
CONNECTION WITH ITS REPLY IN  
SUPPORT OF ITS MOTION TO STRIKE  
EXPERT OPINIONS AND TESTIMONY  
OF DR. JUDITH A. CHEVALIER**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

I, ELIZABETH McCLOSKEY, declare and state as follows:

1. I am an attorney licensed to practice law in the State of California and admitted to practice before this Court. I am an associate at the law firm of Keker & Van Nest, LLP and counsel for Defendant Arista Networks, Inc. (“Arista”) in the above-captioned action. I have personal knowledge of the facts stated herein and, if called as a witness, I could testify competently thereto.

2. I submit this declaration in support of Arista’s Administrative Motion to File Under Seal Confidential Information and Documents Submitted with its Reply in Support of its Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier.

3. I understand that Arista’s Reply in Support of its Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier relates to a non-dispositive motion. In this context, I understand that materials may be sealed so long as the party requesting the sealing order makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In addition, I understand that Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” ( *i.e.*, that the document is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

4. Arista seeks to seal the following material:

Document	Portions of Document to be Sealed
Defendant Arista Networks, Inc.’s Reply in Support of its Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier	Highlighted portions

5. Good cause exists to file under seal the following highlighted material in the foregoing document: (1) *Highlighted text at Page 1, line 20*; (2) *Highlighted text at Page 1, line 24*; (3) *Highlighted text at Page 4, lines 3-4*; and (5) *Highlighted text at Page 5, lines 9-11*. Those

portions of the foregoing document discuss and purport to summarize highly confidential Arista business information, as well as witness statements, emails, and documents that discuss the design and development of Arista software, Arista's marketing and sales strategies, product testing and feature development, and overall product development strategies, all of which is sensitive and highly confidential business information to Arista. See *Apple v. Samsung*, 727 F.3d 1214, 1221–22 (Fed. Cir. 2013) (sealing is appropriate even under the compelling standards threshold if the release of the information will cause competitive harm to a business); *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1162 (9th Cir. 2011) (“The publication of materials that could result in infringement upon trade secrets has long been considered a factor that would overcome this strong presumption.”); see also *Nixon v. Warner Commc’n, Inc.*, 435 U.S. 589, 598 (1978) (“common-law right of inspection has bowed before the power of a court to insure that its records” are not used as “sources of business information that might harm a litigant’s competitive standing”); *Ovonic Battery Co. v. Sanyo Elec. Co.*, Case No. 14-cv-01637, 2014 WL 2758756, at \*2-3 (N.D. Cal. June 17, 2014) (where public disclosure of business information could harm a litigant’s competitive standing by placing it “in a diminished bargaining position in future negotiations with potential customers and competitors,” the records should be sealed).

6. For the remaining highlighted portion of Arista’s Reply in Support of its Motion to Strike Expert Opinions and Testimony of Dr. Judith A. Chevalier, located at page 1, lines 13-14, Arista is submitting that material under seal because it discusses Dr. Judith A. Chevalier’s deposition testimony and expert reports, which have been designated by Cisco as “Highly Confidential – Attorney’s Eyes Only” under the Protective Order. I understand that Cisco may file a declaration under Civil Local Rule 79-5(e)(1) to attempt to establish good cause to submit any of that information in the foregoing document under seal. Arista takes no position as to whether any Cisco-designated confidential material should be filed under seal.

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1 Executed August 26, 2016, at San Francisco, California.

2 I declare under penalty of perjury under the laws of the United States of America that the  
3 foregoing is true and correct.

4 /s/ Elizabeth McCloskey  
5 ELIZABETH MCCLOSKEY